

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Civil Action No. 83-2864(SA)

ANTONIO CIPOLLONE, individually,
and as Executor of the Estate
of Rose D. Cipollone,

Plaintiff,

-vs-

LIGGETT GROUP, INC., a
Delaware Corporation; PHILIP
MORRIS, INCORPORATED, a
Virginia Corporation; and
LOEW'S THEATRES, INC., a
New York Corporation,

Defendants.

TRANSCRIPT OF
PROCEEDINGS

Newark, New Jersey

February 19, 1983
AFTERNOON SESSION

B E F O R E:

HONORABLE W. LEE SAROKIN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

BUDD, LARNER, GROSS, PICILLO, ROSENBAUM,
GREENBERG & SADE, ESQS.,
BY: MARC S. EDSELL, ESQ.
Attorneys for the Plaintiff.

ARNOLD & PORTER, ESQS.,
BY: PETER K. BLEAKLEY, ESQ.,
BY: THOMAS E. SILFEN, ESQ.
Attorneys for the Defendant, Philip Morris.

Pursuant to Section 753 Title 28 United States Code,
the following transcript is certified to be an accurate
record as taken stenographically in the above-entitled
proceedings.

Phyllis T. Lewis, CSR
PHYLLIS T. LEWIS, C.S.R.

Official Court Reporter United States District Court
P.O. Box 25588, Newark, New Jersey 07101

25

Main PI File Room

ORIGINAL
DO NOT Remove Permanently

PHYLLIS T. LEWIS, CSR & JOANNE M. ROUSTON, CSR

A P P E A R A N C E S: (Continued)

**GREENBAUM, ROWE, SMITH, RAVIN, DAVIS &
BERGSTEIN, ESQS.,**

BY: ALAN S. HAAR, ESQ.,

-and-

WEBSTER & SHEFFIELD, ESQS.,

BY: DONALD J. COHN, ESQ.,

JAMES KEARNEY, ESQ.,

FRANCIS DECKER, ESQ.

Attorneys for Defendant, Liggett.

BROWN & CONNERY, ESQS.,

BY: RAYMOND F. DROZDOWSKI, ESQ.,

Attorneys for Defendant

Philip Morris.

STRYKER, TAMS & DILL, ESQS.,

BY: EDITH K. PAYNE, ESQ.,

-and-

SHOOK, HARDY & BACON, ESQS.,

BY: STEVEN PARRISH, ESQ.,

ROBERT E. NORTHRIP, ESQ.,

PATRICK M. SIRRIDGE, ESQ.

Attorneys for Defendants,

Philip Morris and Lorillard.

1 A There wasn't enough evidence.

2 MR. COHN: I have an objection to this question.

3 THE COURT: Where are we?

4 MR. COHN: Page 46, line 11.

5 The question goes to the end of the page and the
6 answer is on the following page at line 13. The question is
7 totally improper. There were objections at the time.

8 THE COURT: The grounds, Mr. Cohn?

9 MR. COHN: Your Honor, it is leading, it's
10 objectionable as to form, lacks any foundation.

11 THE COURT: I'll sustain the objection.

12 MR. EDELL: Page 50, line 19.

13 Q You did not consider yourself to be an expert on the
14 effects of cigarette smoking on human beings in 1952?

15 A I couldn't say that that was true.

16 MR. EDELL: Page 56, line 20.

17 Q You have never been a specialist in lung diseases,
18 correct, sir?

19 A You bet that's correct.

20 MR. EDELL: That's it, your Honor.

21 THE COURT: All right. Thank you.

22 Next, Mr. Edell.

23 MR. EDELL: Thank you, your Honor.

24 Your Honor, I'm going to now read from the
25 deposition of Dr. Bates, William W. Bates, who was director

1 of research at Liggett.

2 THE COURT: All right.

3 MR. KEARNEY: Your Honor, two things.

4 Defendants have a copy for your Honor that's same

5 with the designations and counter-designations.

6 THE COURT: Thank you. I appreciate that.

7 I'll trade you this, Mr. Kearney.

8 MR. KEARNEY: Defendants also have a juror book on

9 Dr. Bates and Dr. Kensler's deposition exhibits that we'd

10 like to have handed out now.

11 And that's a copy for you.

12 MR. EDELL: I have no objection.

13 Can I see them?

14 MR. KEARNEY: They have been given to you.

15 MR. KEARNEY: Your Honor, may I hand them out or

16 the Clerk hand them out?

17 THE COURT: Give them to the Clerk to give them

18 out.

19 Will there be anything in their books?

20 MR. EDELL: I believe there is an insert for Dr.

21 Bates.

22 THE COURT: We have to work through both books

23 then.

24 MR. EDELL: Mr. Kearney, are these documents

25 throughout the deposition?

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 MR. KEARNEY: Yes, I believe they are. When they
2 come up in the deposition, I'll raise them.

3 MR. EDELL: They're different than the ones we have
4 here.

5 THE COURT: That's what I want to know.

6 MS. WALTERS: Three of the documents are identical
7 to the ones we have. Two of those documents are contained
8 in designated testimony of the defendants that we don't
9 think is admissible under the rule of completeness at this
10 time.

11 MR. KEARNEY: May I suggest when we get to that --

12 THE COURT: I'm not ruling on any of that.

13 I'm trying to do this with ease for the jury. You
14 have to make it clear to them where it is they can find
15 this.

16 MR. KEARNEY: As the document comes up, I'll bring
17 it to your attention.

18 THE COURT: Again, the jury should abide by the
19 rule that we've had throughout and that is only turn to
20 something if I direct you to do so and otherwise, do not
21 look through the exhibit book.

22 THE COURT: Mr. Edell.

23 MR. EDELL: Mr. Jacobs is going to read for Dr.
24 Bates.

25 Your Honor, at the beginning of the insert for Dr.

1 Bates, we have a biographical sketch based upon defendants'
2 request for admissions.

3 THE COURT: The jury may turn to that then, the
4 first page after the Bates tab.

5 MR. EDELL: William W. Bates, Jr. was employed by
6 Liggett in its research department from June, 1950 to June
7 1, 1975.

8 He was a research chemist from June, 1950 to 1953.

9 He was the assistant director of research from 1953
10 to 1960.

11 He was associate director of research from 1960 to
12 1964.

13 Dr. Bates was director of research at Liggett from
14 1964 to June 1, 1975.

15 William W. Bates, Jr. was on the Board of Directors
16 of Liggett from August 1, 1964 to April, 1975.

17
18 (The following is deposition testimony read of Dr.
19 William Bates, Jr.)

20
21 MR. EDELL: Beginning at page ten, line three.

22 Q How old are you, sir?

23 A Sixty-five.

24 Q What's your date of birth?

25 A October 12, 1919.

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 Q How is your health?
2 A Generally well.
3 Q Are you taking any medications?
4 A Yes.
5 Q What type of medications are you taking?
6 A I take Corgard, trade name is Corgard, C-o-r-g-a-r-d.
7 It's a heart regulatory drug of some sort.
8 Q You have a heart condition, sir?
9 A Nothing serious.
10 Q What type of condition do you have?
11 A Occasional heartbeat irregularities.
12 Q The medication that you take usually compensates for
13 that?
14 A It has so far.
15 MR. EDELL: Is that enough, Mr. Cohn?
16 MR. COHN: There is a slight portion on page 11.
17 MR. EDELL: I don't know whether we have to go in
18 through that.
19 MR. COHN: Lines eight through 16. Can you pick up
20 at the bottom?
21 MR. EDELL: I can read it.
22 THE COURT: I don't think it's necessary.
23 MR. EDELL: Continue at page 11, line 22.
24 Q Have you had an opportunity to talk to any lawyers
25 regarding this deposition prior to today?

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 A Yes.

2 Q With whom did you have an opportunity to speak, sir?

3 A Primarily with Mr. Conn.

4 Q And?

5 A And also my attorney, Mr. Pope.

6 Q When did you speak to Mr. Conn for the first time

7 regarding this deposition?

8 A Some time in March. I don't recall the date.

9 Q Did you speak with him over the phone or did he come

10 down and see you?

11 A I spoke to him over the phone and he came down and to

12 see me.

13 Q How much time did he spend with you, not on the phone,

14 when he came down to speak with you, approximately?

15 A About four hours roughly.

16 MR. COHN: Your Honor, I ask that lines 17 through

17 24 be read on page 12.

18 THE COURT: Yes. Read that, please.

19 Q Where did you meet, sir?

20 A At my home.

21 Q What did you discuss?

22 A He -- basically, he asked me questions about what work I

23 did while I was at Liggett.

24 Q Do you recall any specifics of the conversation that you

25 had with Mr. Conn?

1 A Not really, no.

2 Q Did Mr. Cohn tell you who he represented?

3 A Yes.

4 Q I'm sorry?

5 A I have known of Mr. Cohn's law firm for quite a long

6 time.

7 Q His law firm had done work for many years for Ziggert &

8 Myers, correct?

9 A Yes, that's correct.

10 Q As a matter of fact --

11 MR. COHN: I object to the next question. Down

12 through --

13 THE COURT: Are you starting at 19? Is that what

14 you plan to do, anyway, Mr. Edell?

15 MR. EDELL: That's where Mr. Cohn wants me to begin

16 at 19, your Honor.

17 MR. COHN: I would start at 19, your Honor. This

18 at page 13.

19 MR. EDELL: I begin -- my designation begins again

20 page 14, line seven.

21 THE COURT: You can read that, beginning of line

22 19.

23 MR. EDELL: You're going to sustain the objection

24 with regard to nine through 18?

25 THE COURT: I thought nobody wanted that, the way

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 I'm looking at it. Nobody's requested that.

2 MR. EDELL: I think maybe the defendants'
3 designation is listed in your book, your Honor.

4 THE COURT: I have in green, I thought was the
5 plaintiffs' and in yellow the defendants' request.

6 MR. COHN: That's correct.

7 THE COURT: Have I got it right?

8 MR. EDELL: We have a different copy. Ours is in
9 yellow and blue, but I don't know whether it makes a
10 difference.

11 MR. COHN: Are we on page 13?

12 MR. EDELL: Let me see.

13 We've designated on page 13 down through 18, even
14 on Mr. Cohn's copy.

15 THE COURT: I'll sustain the objection.

16 MR. EDELL: Okay.

17 Q Did Mr. Cohn discuss with you what questions you should
18 anticipate my asking here today?

19 A As I recall, he just asked, primarily asked me questions
20 which I tried to answer, if I could.

21 Q But he didn't discuss with you what questions you should
22 anticipate my asking during the course of this deposition.
23 Is that correct?

24 A To the best of my knowledge, that's correct, yes.

25 Q Was there anyone else present other than Mr. Cohn at the

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 time of the March meeting?

2 A No.

3 Q Any time subsequent to that March meeting did you again
4 meet with Mr. Cohn or a representative of his office?

5 A Yes.

6 Q When did that occur?

7 A It would have been last Friday.

8 Q With whom did you meet, sir?

9 A Mr. Cohn and Mr. Decker.

10 Q Francis Decker?

11 A Yes.

12 Q What did you discuss last Friday?

13 A Essentially the same thing we did the first time.

14 Q They went over again with you what you did at Liggett &
15 Myers?

16 A Yes.

17 Q Were there new questions that he had of you concerning
18 what you did at Liggett & Myers?

19 A I can't recall there were any new questions. There may
20 have been.

21 Q Did he discuss with you at that time, that is, last
22 Friday, what questions you should anticipate my asking
23 during the course of this deposition?

24 A Primarily just asked questions and I tried to give my
25 best answer to them.

PHYLLIS T. LEWIS, CSR & JOANNE N. HOUSTON, CSR

1 MR. EDELL: Starting at page 20, line 23.

2 Q Can you give us the benefit of your educational
3 background, sir?

4 A I attended several schools around South Carolina and
5 graduated from high school in Camden, South Carolina.

6 Q When did you graduate?

7 A 1937. I graduated from the Citadel in 1941 with a B.S.
8 in chemistry and received a Ph.D. degree in physical
9 chemistry from Duke University in 1951.

10 MR. COHN: Your Honor, we request on page 21, lines
11 eight through 14 be read. They're shortening up this... I
12 would just request now on page 21, lines eight through 14.

13 MR. EDELL: I have no problem with that, Judge.

14 Q Did you go to school full-time from the time you
15 graduated the Citadel until you received your Ph.D.

16 A No, I was four years in the army.

17 Q Where were you stationed?

18 A About 15 different stations in the United States, and in
19 England and France.

20 MR. COHN: Your Honor, we request that the -- on
21 page 30, lines eight through 18 be read.

22 MR. EDELL: Your Honor, I don't understand how this
23 has anything to do --

24 THE COURT: Sustained.

25 MR. EDELL: Page 35.

1 THE COURT: Well, I guess when I say sustained, I
2 mean the request to read those portions is not granted.

3 MR. EDELL: I understood that.

4 THE COURT: Sustain your objection to reading.

5 MR. EDELL: Page 35, line 16.

6 Q Did you ever become aware of Dr. Gross doing work for
7 Liggett & Myers?

8 A I did.

9 Q When did you become aware of that, sir?

10 A Probably sometime 1950 or so.

11 Q How did you become aware of that?

12 A I really don't know. Before the laboratory building for
13 research department was built, the embryo research
14 department of Liggett & Myers occupied several labs at Duke
15 University chemistry building and I knew they were -- either
16 from then or very shortly after I came went to work for
17 Liggett & Myers, just became aware of the fact Dr. Gross had
18 some sort of arrangement with Liggett & Myers.

19 Q It wasn't until after you began your employment with
20 Liggett?

21 A I'm not sure whether it was after I became employed with
22 Liggett & Myers or whether it was while I was still in
23 graduate school and Liggett & Myers had some laboratory
24 story space in the Duke chemistry building.

25 Q Did anyone else at Duke University do any consulting

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 work for Liggett & Myers other than Dr. Gross?
2 A Yes.
3 Q Who was that, sir?
4 A At one time or another Dr. Marcus Hobbs consulted and
5 Dr. Frederick Darkis was also a consultant with Liggett &
6 Myers.
7 Q Do you recall when you began your employment with
8 Liggett & Myers?
9 A Yes, in June, 1950.
10 Q Did Liggett & Myers have a research development
11 department at that time?
12 A The building was just being completed.
13 Q Who was doing the hiring of these people who were going
14 to work in the research and development department at
15 Liggett & Myers?
16 A Dr. Darkis.
17 Q Dr. Darkis had been hired as the director of the
18 department?
19 A That's correct.
20 Q You told us that Dr. Darkis was the director of research
21 for Liggett & Myers sometime around 1950.
22 You were hired in what capacity, sir?
23 A Research chemist.
24 Q Who also was working for Liggett & Myers in the research
25 department at that time?

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 A Dr. E. J. Mackney, Mr. Henry Shule, Mr. Thomas Walker,
2 Mr. Harvey Holbrook. There may have been some others but
3 these are the only ones I remember. It was a relatively
4 small group.

5 Q What did you do?

6 A My primary responsibility was to study leaf tobacco from
7 the standpoint of some relatively gross chemical
8 composition, total sugars, total nitrogen, total alkaloid,
9 and attempt to relate these gross chemical features with the
10 traditional judgment of quality of tobacco that had been
11 made by the leaf buyers in the past and to work with the
12 various experiment stations in tobacco growing states --
13 make that tobacco growing states -- states that grow tobacco
14 normally used in cigarettes rather than cigar or chewing or
15 other type and to keep abreast of the new varieties of
16 tobacco being developed at the various stations.

17 MR. EDELL: Is that enough, Mr. Cohn?

18 MR. COHN: Well, I would prefer if you read down to
19 Line 18, Mr. Edell.

20 Q Will you, please?

21 You say experiment stations, were those stations
22 run by Liggett & Myers?

23 A No. Virginia Polytechnic Institute, Clemson
24 University, North Carolina State College, they were state,
25 federal experiments stations, mostly land grant colleges.

1 Q Were you aware of any other work that was being done at
2 that time in the research department by anyone else?

3 A That was mostly the work that was being done at that
4 time in the research department.

5 Q About how long did you spend most of your time with leaf
6 tobacco?

7 A Well, several years. And for at least ten years it was
8 my primary job.

9 MR. EDELL: Continuing at page 43, line nine.

10 Q Was there a library there?

11 A Yes.

12 Q Was anyone responsible for the library?

13 A Essentially there was a librarian. I say essentially.
14 I don't remember. It was a matter of -- could have been a
15 matter of several months after we moved into the building
16 before she arrived. She -- she was a B.S. chemist graduate
17 of Duke. Mary Ruth Lake.

18 Q When was the first time you became aware of Dr. Wynder's
19 work?

20 A I guess it would have been January, 1954.

21 Q How did you become aware of it?

22 A Oh, somebody called my attention to his article in the
23 Journal of American Medical Association, I believe it was.

24 Q That was the first time that you became aware of Dr.
25 Wynder's work?

PHYLLIS T. LEWIS, CSR & JOANNE R. HOUSTON, CSR

1 A Yes.

2 Q Prior to that time were you aware of any work done by
3 anyone attempting to analyze what, if any, effect the
4 products produced by cigarette smoking would have on animals
5 or human beings?

6 A Not to my recollection.

7 Q While you were studying for your Ph.D., you told us you
8 did work related to tobacco. Is that correct?

9 A Turkish tobacco. Oriental is a more precise term.

10 Q Did the thought ever cross your mind there might be in
11 the tobacco or in the products that were produced by burning
12 tobacco that might be deleterious?

13 A No.

14 Q Were you ever aware of -- again during the time period
15 you were working on your Ph.D. -- were you aware of any
16 attempts to isolate the different materials that were
17 produced during the pyrolyzation of tobacco or cigarette
18 paper?

19 A No.

20 MR. COHN: Your Honor, I would object to the next
21 question. I believe Dr. Bates' personal practice is
22 irrelevant.

23 THE COURT: Lines five through ten?

24 MR. COHN: Yes, your Honor.

25 THE COURT: Sustained.

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 MR. CONN: There is a series of questions --

2 MR. EDELL: Page 51.

3 MR. CONN: -- with the same objection. Since that
4 objection was sustained, we withdraw our requests for some
5 of the others.

6 MR. EDELL: I know that.

7 Q Were you suppressed -- were you surprised at the results
8 of Dr. Wynder's work?

9 You may answer the question, sir.

10 A I don't know that I was surprised. I don't recall that
11 I had any particular reaction to it when I first heard about
12 it.

13 Q Well, you were working for a cigarette manufacturer for
14 about four years, correct?

15 A Yes.

16 Q And Dr. Wynder's study was the first study that you were
17 aware of that indicted, sir, cigarette smoking as a
18 potential cause of cancer, correct?

19 A The work that I was doing at the time was such that
20 hearing about Dr. Wynder's work really didn't, as I recall,
21 didn't bother me much one way or the other.

22 MR. EDELL: Page 53.

23 Q Do you recall Liggett & Myers contracting with Arthur D.
24 Little in 1954 to do some research?

25 A I recall that it was done.

1 Q Do you recall --

2 MR. EDULL: I think the answer starts.

3 A That some work was contracted. I wasn't aware of it at
4 the time it was done, but I became aware of the fact.

5 Q Did you become aware of the fact that the reason Liggett
6 & Myers contracted with Arthur D. Little was a result of
7 Wynder's publication?

8 A I became aware of that, yes.

9 Q What was it about Dr. Wynder's publication that caused
10 it Liggett & Myers to contract with Arthur D. Little?

11 A I wasn't part of the decision to do it, so I don't know
12 what the considerations were at that time.

13 Q Who was part of the decision-making process at Liggett &
14 Myers in so far as the company's decision to contract with
15 Arthur D. Little?

16 A From the research standpoint it would have been Dr.
17 Darkis.

18 Q Was there someone who assisted Dr. Darkis in the work
19 that was being done by for Liggett & Myers by Arthur D.
20 Little?

21 A There probably -- I believe it was Dr. Mackney.

22 Q Did you at any point in time begin to assist Dr. Darkis
23 with respect to the work that was being done by Arthur D.
24 Little for Liggett & Myers?

25 A I did at a point in time since Dr. Darkis' work was

1 being done at Arthur D. Little, but it was a significant
2 time later, not years later.

3 Q Did you discuss with Dr. Darkis the work that was being
4 done by Arthur D. Little?

5 A I essentially did. But when it was, I really don't
6 know.

7 Q When did Dr. Darkis leave Liggett & Myers?

8 A In 1964.

9 Q He died. Is that correct?

10 A No. He died about a year ago or two years ago.

11 Q When he left in 1964 you took over as director; correct?

12 A That's correct.

13 Q Dr. Bates, I am going to show you a document marked
14 Bates 2 for identification. It is a letter from Dr. Darkis
15 to W.A. Blount, February 4, 1954.

16 MR. EDELL: This is Plaintiff's Exhibit 6109, your
17 Honor. In the jury binder, Page 1.

18 THE COURT: Any objection?

19 MR. COHN: No objection.

20 THE COURT: Page 1 the jury may turn to.

21 Q It attaches what Dr. Darkis refers to as notes which Dr.
22 Hobbs and he made during a certain meeting.

23 I am going to ask you whether or not you recognize
24 Dr. Darkis' signature on that document?

25 A It looks like his.

1 Q You had the opportunity to observe his signature during
2 the --

3 A I had seen it a number of times and it appears to be Dr.
4 Darkis' signature.

5 Q Who is Mr. Blount?

6 A It depends what date that was.

7 Q Let's talk about the letter, February 4, 1954.

8 A Okay. Well, he was vice-president of manufacturing for
9 Liggett & Myers.

10 Q Who is Mr. Few?

11 A Mr. Few was president I believe at that time of Liggett
12 & Myers.

13 Q Do you recall that Dr. Robbs in 1954 was acting as a
14 consultant to Liggett & Myers?

15 A I don't recall specifically that he was at that
16 particular date. I know he was. Did act as a consultant
17 over a number of years.

18 Q Do you know approximately the years that that consulting
19 arrangement began and ended?

20 A Well, it ended about 1971 or '2, along in there. But
21 when it began, I do not know.

22 Q Did you ever discuss with Dr. Darkis, Liggett & Myers
23 position with respect to the work that was being performed
24 by the tobacco industry research committee?

25 A I think I have -- I know I have discussed the matter

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 with Dr. Darkis.

2 Q Do you recall Dr. Darkis telling you that it was his
3 opinion that the committee for the tobacco companies was not
4 working too effectively on cancer?

5 A I don't recall him making that statement.

6 Q Dr. Bates, I am going to show you a document which we've
7 marked as Bates 3 for identification.

8 MR. EDSELL: Your Honor, that is Plaintiff's Exhibit
9 308 in the binder pages six and seven.

10 MR. KEARNEY: We have no objection to that
11 document. The document in its complete form is contained in
12 defendants' binder at tab one. I believe only three pages
13 of it is in plaintiff's binder.

14 THE COURT: All right. With that understanding,
15 you have no objection to the jury turning to pages six and
16 seven then?

17 MR. KEARNEY: None, your Honor and if the jury is
18 inclined they can look at tab one for the complete exhibit.

19 MR. WALTERS: We have the complete exhibit to offer
20 into evidence.

21 THE COURT: Jury can turn to pages six and seven.

22 MR. EDSELL: Yes. We have the whole exhibit.

23 Q It is a memoranda to R. Stevens of March 29, 1954,
24 subject, Liggett & Myers conference on March 25, 1954.

25 Question on page 67: I meant to direct your

1 attention, sir, to the first paragraph where it says Dr.
2 Pleser asked if it was possible for the tobacco industry to
3 support cancer agencies. Dr. Darkin replied that it was
4 Liggett and Myers' policy that they could get more work done
5 by using an agency such as ADL.

6 He stated that it was his opinion the committee for
7 the tobacco companies is not working too effectively on
8 cancer.

9 Does that refresh your memory, sir, with respect to
10 what Dr. Darkin's opinion was concerning how effectively the
11 Tobacco Industry Research Committee was working on the issue
12 of cancer?

13 A They -- his position and later my position has been that
14 a directed problem-solving research program is more
15 effective than making many small individual grants to
16 people.

17 Q Why is that, sir?

18 A Because it's directed and can proceed in a step-by-step
19 fashion. When a granting agency makes grants, they normally
20 make grants that individual scientists come in and request
21 funds to support and the grant is made and direction cannot
22 be changed or improved until the end of the granting period;
23 whereas, with an integrated, directed approach, if new
24 information becomes available, it can be acted on without
25 waiting a year or two years to act on it.

1 It's a philosophy of research direction that Dr.
2 Darkis had and I had?

3 Q That was Dr. Darkis' opinion as far as you recall
4 discussing the matter with him?

5 A Yes.

6 Q Did you or Dr. Darkis ever inform the funding companies
7 of the TIRC of your opinion in that regard?

8 A I don't know that Dr. Darkis ever informed other
9 companies. I know he informed the management at Liggett &
10 Myers of his belief.

11 Q How are you aware of that, sir?

12 A I have been present when he has done that.

13 Q Were you aware in 1954 of what Liggett & Myers' position
14 was regarding the information linking smoking and cancer?

15 A Yes.

16 Q What was that?

17 A That there was no proven link between smoking and
18 cancer.

19 Q You said there was no proven link. Was there an
20 association?

21 A Well, the press made many associations, yes.

22 Q Well, was it Liggett & Myers' opinion that there was no
23 relationship or that it hadn't been proven to a certainty?
24 Sir?

25 A There was no relationship.

PHYLLIS T. LEWIS, CSR & JOANNE N. HOUSTON, CSR

1 Q Do you recall Dr. Darkis ever describing the
2 relationship between cigarette smoking and cancer as weak as
3 opposed to no relationship at all?

4 A No. I don't recall that.

5 Q I am going to direct your attention again to the
6 document, Bates 3 for identification, now, specifically to
7 the second paragraph that I began to read previously, see if
8 that refreshes your recollection.

9 MR. ZEDLER: This is the same document.

10 Q Dr. Darkis pointed out that Liggett & Myers major
11 concern is to produce cigarettes that the public will use
12 and then to make these cigarettes the best possible from a
13 health standpoint.

14 Dr. Darkis continued that the talk of cancer has
15 reduced the sales of cigarettes. He then made the following
16 points:

17 One. In Liggett & Myers' opinion the information
18 linking smoking and cancer is weak.

19 Two, they do not believe in the use of negatives or
20 in tearing down other people's work.

21 Three, the work must be done on Liggett & Myers'
22 product.

23 Four, it would be good if absolute proof could be
24 found indicating that tobacco is safe to use and not a cause
25 of lung cancer.

1 A I still don't recall him saying that.

2 Q That doesn't refresh your recollection?

3 A No, it does not.

4 Q Who is Dr. L. Leiserson?

5 A Yes.

6 Q Who is that, sir?

7 A He was an organic chemist that worked at the Liggett
8 research department for awhile.

9 Q Did you have an opinion back in 1954 as to whether or
10 not cigarette smoking might be harmful?

11 A If I did, I don't recall what it was.

12 Q Do you ever recall having an opinion regarding cigarette
13 smoking and health?

14 A My opinion is that cigarette smoking isn't connected
15 with health.

16 Q At all. Is that correct?

17 A That's correct.

18 Q Do you believe that cigarette smoking causes cancer?

19 A I do not.

20 Q Do you believe that cigarette smoking may cause cancer?

21 A I don't.

22 Q Why?

23 A I just don't believe it.

24 Q What is the basis of that belief?

25 A I've never been convinced that there is a connection.

1 Q You have never been convinced that there may be a
2 connection. Correct?

3 A I've just never been convinced that there is a
4 connection.

5 Q That wasn't my question, sir.

6 A All right.

7 Q What do you base that on, that statement?

8 A Anything that I have seen in the past twenty years.

9 Q Did you ever discuss with Dr. Machle his opinions
10 regarding cigarette smoking and health?

11 MR. COHN: Could we have the balance of the page
12 read, Page 86.

13 MR. EDELL: What do you base that on, that
14 statement?

15 MR. COHN: Anything between the past twenty years,
16 and I ask that the next question and answer be read also.

17 MR. EDELL: Okay.

18 Q Anything and everything, is that right?

19 A With the sub total.

20 Q Did you ever discuss with Dr. Machle his opinions
21 regarding cigarette smoking and health?

22 A Not that I recall.

23 Q You were aware that Dr. Machle was working as a
24 consultant with Arthur D. Little on the issue of cigarette
25 smoking and its biological effects. Correct?

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 A I knew he at one time was working with Arthur D. Little,
2 but I'm not -- I don't recall that I knew what he was doing.

3 Q Were you aware that Dr. Machle informed Dr. Gross, Dr.
4 Darkin, Dr. Mackney and Dr. Leiserson and yourself back in
5 1954 that there appeared to be something in the relationship
6 of smoking to cancer and in his opinion, the problem is one
7 of identification, measurement and elimination?

8 A I don't recall --

9 Q I'm going to direct your attention --

10 A -- that.

11 Q I'll direct your attention to Page 3 of Bates 4 for
12 identification, the first paragraph --

13 MR. EDELL: This is Plaintiff's Exhibit 107 and
14 it's in the binder at page nine, your Honor.

15 MR. KEARNEY: No objection, your Honor, and it
16 appears the sections that the defendants wish to highlight
17 appears at tab two at the defendants' books.

18 THE COURT: Jury may turn to Page 9.

19 Q I direct your attention to Page 3 of Bates 4 for
20 identification. The first paragraph where it states, quote:

21 Dr. Machle stated that there appears to be
22 something in the relationship of smoking to cancer. And in
23 his opinion the problem is one of identification,
24 measurement and elimination.

25 See if that refreshes your recollection with

1 respect to what Dr. Machle stated to you at that time.

2 A It does not refresh my memory.

3 Q That document does in fact reflect you as being present
4 at that meeting, does it not, sir?

5 A It has my name on it, yes.

6 Q Do you recall attending meetings with members of Arthur
7 D. Little in Durham to discuss what was being done for
8 Liggett & Myers by Arthur D. Little?

9 A I have attended meetings.

10 Q Do you recall the results of the work performed by
11 Arthur D. Little for Liggett & Myers in terms of duplicating
12 Dr. Wynder's work?

13 A Only to the extent that the animals developed skin
14 tumors, but at a lower incidence than reported by Dr. Wynder
15 and Graham.

16 Q Did Liggett & Myers inform the public of Arthur D.
17 Little's findings regarding --

18 A Eventually did.

19 Q Eventually about four years after the findings were
20 made?

21 A I don't recall.

22 Q You don't remember?

23 A I don't recall.

24 Q The findings were not made immediately available to the
25 public is that. Correct, sir?

PHYLLIS T. LEVIS, CSR & JOANNE M. HOUSTON, CSR

1 A That is correct.

2 NB. COHN: Next lines, Page 91, 19 to 24.

3 THE COURT: Yes. Granted.

4 Q It was a matter of years before the information was made
5 public. Isn't that right?

6 A I'm not certain.

7 Q You know it wasn't a month or two. Right?

8 A I don't recall the time-lag.

9 Q The reason that Liggett & Myers contracted with Arthur
10 D. Little to attempt to duplicate Dr. Wynder's and Dr.
11 Graham's study was to determine whether or not the results
12 would be the same or similar to Dr. Wynder and Graham's if
13 one used cigarettes manufactured by Liggett & Myers.
14 Correct?

15 A No. I don't think that was the reason.

16 Q What was the reason?

17 A To see if the results that were obtained by Wynder and
18 Graham could be replicated?

19 Q Why?

20 A Normally in science one likes to have something that is
21 reproducible and replicable.

22 Q Why?

23 A Otherwise it's just a chance happening.

24 Q And what significance is it if the experiment is
25 duplicated or replicated in science?

1 A It means that it very likely, that the effect object
2 is a real one.

3 Q Dr. Bates, I'm going to show you a document we call
4 Bates 5 for identification.

5 MR. EDZELL: That is in the jury binder page 13,
6 your Honor, P-6161.

7 MR. MEANEY: No objection.

8 THE COURT: Jury may turn to page 13.

9 Q It is a memoranda from C.J. Kensler. Do you know who
10 that is?

11 A Yes.

12 Q Who is that?

13 A He's Dr. Charles Kensler at Arthur D. Little.

14 Q To Dr. L.W. Bass. Do you know who that is?

15 A Yes. He was an employee of Liggett -- Arthur D. Little
16 Little.

17 Q It is dated September 28, 1955? The subject is L and W
18 meeting in Durham, North Carolina, December 20, 1955. It
19 lists in attendance Drs. Darkis, Hackney, Bates and Hobbs
20 for L and W. Drs. Thayer, Hainer and Kensler from ADL. I
21 ask you, sir, whether or not that refreshes your
22 recollection as to when ADL was able to reproduce Dr.
23 Wynder's study?

24 A It sounds as though the experiments are in progress, but
25 it doesn't -- it doesn't help me recall the time when they

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 were finished.

2 Q I'm going to show you a document which we marked as
3 Bates 7.

4 MR. EDELL: This is Plaintiff's Exhibit 318 at
5 binder page 14, your Honor.

6 MR. KEARNEY: No objection to that and the entire
7 exhibit is contained in Exhibit 3 H, the sections we chose
8 to highlight in the defendants' book.

9 THE COURT: Jury may turn to page 14.

10 Again, I don't mean to be ignoring Mr. Kearney's
11 comments. If you feel you wish to, you certainly can turn
12 to the complete exhibit in the defendants' book. What page

13 MR. KEARNEY: Tab three, Judge.

14 THE COURT: Thank you.

15 Q It is a report to Liggett's & Myers Tobacco Company from
16 Arthur D. Little dated December 31, 1956, and it's entitled:
17 "The response of CAF-1, hybrid mice to the repeated
18 application to the skin of concentrated solutions of
19 cigarette smoke tar." The document contains a letter signed
20 by Arthur D. Little to Dr. Darkis of December 31, 1956.

21 Why don't you take a look at this and see if it
22 refreshes your recollection as to when Arthur D. Little was
23 able to duplicate the studies of Drs. Graham and Wynder?

24 A According to this, in December of '56.

25 Q Sir, is this report, which is marked as Bates 7, a

1 report of a study prepared by Arthur D. Little in which
2 there was an attempt to duplicate the Wynder-Graham study?

3 A That is what it says.

4 Q Are you familiar with the efforts of Arthur D. Little to
5 duplicate Dr. Wynder and Dr. Graham's study?

6 A Yes.

7 Q I am going to show you Page 1 of the report, which is
8 Roman numeral one, summary, ask you to look at the summary
9 and see whether or not the summary coincides with your
10 recollection of the results of the study.

11 A It's basically as I recall the outcome of those
12 experiments.

13 MR. EDSELL: That's at plaintiff's exhibit 15, your
14 Honor, in the jury binder.

15 Q Are the findings contained in the summary of dates seven
16 of any significance with respect to the issue of cigarette
17 smoking and health?

18 A I don't know.

19 Q You don't have any idea?

20 A No.

21 Q Is any of the work that was performed by Arthur D.
22 Little for Liggett relevant in any way to the issue of
23 cigarette smoking and health?

24 A I'm not certain that it was.

25 Q One way or the other?

1 A No.

2 Q Do you understand why Liggett & Myers was funding the
3 work done at Arthur D. Little?

4 A To attempt to find out whether the results that Wynder
5 and Graham had published were repeatable, reproducible.

6 Q Was there not an attempt by Dr. Wynder and Dr. Graham
7 extrapolate from their experiment on mice to people?

8 A Yes, there was.

9 Q Was that one of the reasons why Liggett & Myers funded
10 the study, studies that we're discussing regarding the work
11 done by Arthur D. Little?

12 A I don't understand your question now.

13 Q Well, if the work that was done by Drs. Graham and Dr.
14 Wynder only concerned mice, would it have had any
15 significance to Liggett & Myers?

16 A No.

17 Q The reason that it had some significance to Liggett &
18 Myers is because there was an attempt to extrapolate from
19 that experience with mice to people, correct?

20 A That's what Wynder and Graham attempted to do.

21 Q That's why Arthur D. Little was hired to duplicate or
22 attempt to duplicate Dr. Wynder and Graham's study, correct?

23 A To see if it was reproducible.

24 Q And it was reproducible, correct?

25 A Well, significantly so, yes.

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 Q The findings were significantly correct, correct, sir?

2 A That's right, treated groups were significant from the
3 controls.

4 Q What does that mean?

5 A It means that if he put enough cigarette smoke
6 condensate on the backs of susceptible mice you get tumors.

7 Q In 1956, was experimentation with animals an accepted
8 means by which to conduct biological research?

9 A I don't know what you mean by acceptable or what you
10 mean by biological research. It -- mouse painting
11 experiments were used rather widely, yes.

12 Q Why?

13 A I don't know. I'm not a biologist but they were used.

14 Q You have no idea as to why mice were being used for
15 experimental purposes. Is that correct, sir?

16 A They were used as an indicator of the skin
17 tumorigenicity is the of compounds.

18 Q Is there a reason why they used animals to do that sort
19 of research?

20 A Well, things don't get skin tumors and animals do and
21 it's not ethical to use humans, so there is only one thing
22 left and that's animal.

23 Q Closest thing you can do is a mouse. Is that correct?

24 A I don't know why the mice were chosen.

25 Q Did you ever learn why mice were chosen?

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 A No.

2 Q Who at Liggett & Myers was the individual who had
3 responsibility for evaluating the report of December 11,
4 1956 from Arthur D. Little which we marked as Bates seven
5 for identification?

6 A Dr. Darkis.

7 Q Did Dr. Darkis have any training with respect to
8 biological studies?

9 A No.

10 Q Definite any expertise in that area?

11 A No.

12 Q Did anyone else at Liggett & Myers have any expertise in
13 the area of animal experimentation?

14 A No.

15 Q You took over Dr. Darkis' responsibilities in 1954,
16 correct?

17 THE COURT: '64.

18 MR. EDELL: '64?

19 MR. JACOBS: That's correct.

20 MR. EDELL: Let me just get a glass of water.

21 Page 107, line nine.

22 Q When you took over as director of research in 1964 and
23 you received reports from Arthur D. Little, how would you
24 evaluate those reports?

25 A Well, I would read them and discuss the reports with

1 people at Arthur D. Little.

2 Q Did you rely upon Arthur D. Little to give you advice
3 regarding the causal relationship, if any, between cigaret
4 smoking and cancer?

5 A Relied on Arthur D. Little no interpret the biology of
6 the tests they were doing.

7 Q Did you rely upon them to give you their opinions on
8 whether or not the tests that they were performing and the
9 findings arising out of those tests would be extrapolated to
10 human experience?

11 A Yes.

12 Q Did you follow their advice in that regard?

13 A Mostly.

14 Q Were there instances in which you did not follow their
15 advice?

16 A Well, I'm not there were, but I can't recall specifics.

17 MR. KEARNEY: Your Honor, I don't know if that was
18 read correctly.

19 MR. EDELL: No. It says, no, "Well, I'm sure there
20 were."

21 I'll read it again so we have it in context.

22 Q Were there instances in which you did not follow their
23 advice?

24 A Well, I'm sure there were, but I can't recall specifics.

25 MR. CONN: Your Honor, as long as we went down

1 there, the next question and answer?

2 THE COURT: Objection, Mr. Edell?

3 MR. EDELL: No, your Honor.

4 THE COURT: Okay.

5 Q Did anyone at Arthur D. Little ever tell you that in
6 their opinion there was a relationship between cigarette
7 smoking and lung cancer?

8 A I don't recall that they ever did.

9 MR. EDELL: Page 118.

10 Q When you say the mouse skin activity, you're talking
11 about the papillomas and carcinomas, correct?

12 A Correct, that's correct.

13 Q Why was Liggett & Myers attempting to identify the
14 different elements contained in cigarette smoke subsequent
15 to Arthur D. Little performing the test as you just
16 described where they attempted to duplicate the efforts of
17 Drs. Wynder and Graham?

18 A We were interested in identifying the materials that may
19 be responsible for the mouse skin activity and, if possible,
20 to alter the product in such a way that it would decrease
21 the contents of the materials and allow cigarette smoking
22 condensate to be treated -- to be tested on mice and not
23 produce skin tumors.

24 Q Why?

25 A Because of the real large-scale publicity that the

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 Wynder/Graham papers had received and we thought it would
2 desirable not to have a product which did not react in a
3 manner.

4 Q You were doing this fractionization in an attempt to
5 identify the elements in cigarette smoke that produced all
6 carcinomas and papillomas in the Wynder and Graham study
7 in the Arthur D. Little study, correct?

8 A On the backs of mice, yes.

9 Q The reason you were doing that was because there was
10 certain concern in the public regarding these studies,
11 correct?

12 A It was a concern we had as of the response of the
13 public.

14 Q What concern did you have of the response of the public

15 A We had a concern that they wouldn't smoke our
16 cigarettes.

17 Q Did you ever identify that portion of the cigarette
18 smoke or that element in cigarette smoke that produced these
19 carcinomas and papillomas?

20 A No.

21 Q How many years did you try to do that? When I say you,
22 I mean Liggett & Myers.

23 A From roughly '56 until I left the company.

24 Q That was the research, the research goals?

25 MR. CORN: Excuse me. Can we have the next

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 question and answer? Even he doesn't add that.

2 That's on page 21. You left out lines 20 and 2

3 Q Which is again in what year, sir?

4 A 1975.

5 MR. COHN: Can we have those two questions toget
6 so the jury gets them?

7 THE COURT: Read 17 through 21.

8 Q How many years did you try to do that? When I say you
9 I mean Liggett & Myers.

10 A From roughly '56 until I left the company.

11 Q Which is again in what year?

12 A 1975.

13 Q Was there any other goal, other than the research goal,
14 sir?

15 A I don't know.

16 Q Sir, did you ever hold an executive position with
17 Liggett & Myers?

18 A Director of research.

19 Q Did you ever hold a management position?

20 A No.

21 Q Were you ever on the Board of Directors?

22 A Yes.

23 Q When were you on the Board of Directors?

24 A From '64 to '75.

25 Q Your predecessor, Dr. Darkin, was on the Board of

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 Directors -- on the board prior to your joining the board,
2 correct?

3 A He was.

4 Q Was there any reason that Liggett & Myers was doing it?

5 A I know of no other reason.

6 Q It was never the purpose of Liggett & Myers, sir, to
7 attempt to identify the agent in cigarette smoke which
8 caused these papillomas and carcinomas in order that the
9 agent could be removed and the cigarette marketed by
10 Liggett?

11 A To see if it could be removed.

12 Q In order that you could commercially produce a cigarette
13 without that agent. Isn't that correct?

14 A Hopefully that would be the case, yes.

15 Q That was the ultimate goal of this project, was it not,
16 sir?

17 A Yes.

18 MR. RDILL: Page 127, line four.

19 Q Dr. Bates, what's benzo[a]pyrene?

20 A It's an aromatic hydrocarbon.

21 Q Has it been considered to be a carcinogen?

22 A It's been considered to be a mouse skin carcinogen, yes.

23 Q Are you aware of any studies which have shown that
24 benzo[a]pyrene is considered to be a carcinogen in mice?

25 A Not -- yes, in mice.

1 Q Is benzpyrene produced during the pyrolyzation of
2 cigarettes?
3 A Yes.
4 Q So that the smoke that you get from cigarettes contain
5 benzpyrene, correct?
6 A Yes.
7 Q You were aware that benzpyrene caused cancer in animal
8 back in 1954, were you not?
9 A Along about there. I'm not certain whether it was '54
10 or '55 or '56.
11 Q Did Liggett & Myers warn the consumer of its products
12 that one of the elements contained in the smoke produced by
13 its cigarettes caused cancer in animals back in 1954?
14 A Not to my knowledge.
15 Q Do you know why, sir?
16 A No.
17 Q Other than benzpyrene, did Liggett & Myers ever identify
18 any other elements in cigarette smoke that caused papillomas
19 or carcinomas in mice?
20 A I think there were some other aromatic hydrocarbons
21 identified in cigarette smoke in small quantities that have
22 been reported to give skin tumors on mice. I can't name
23 specific compounds.
24 Q When was that ascertained, that information?
25 A From sometime in '54 on, a lot of people were doing a

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 lot of work with cigarette smoke condensates and various
2 sundry compounds were reported over a period of time.
3 don't recall the dates or individuals.

4 MR. CONN: Your Honor, we would request that on
5 136, lines 12 through the end of the page and on over in
6 down to line 15.

7 THE COURT: Any objection, Mr. Edell?

8 MR. EDSELL: I don't have any strenuous objection,
9 Judge.

10 THE COURT: All right.

11 Q Was there ever an attempt by Liggett & Myers to remove
12 these aromatic hydrocarbons from the smoke produced by its
13 cigarette?

14 A Not specifically that I recall.

15 Q Generally was there an attempt?

16 A Not generally and accepted. At one stage of the
17 research attempts were made to alter the composition of the
18 smoke by the addition of a catalyst so that it would
19 eliminate, or greatly reduce the mouse skin activity.

20 Q That was the palladium effort, sir?

21 A That was --

22 Q Is that correct?

23 A That was -- the palladium was one. Quite a large number
24 of efforts. None of these hydrocarbons individually or
25 collectively based on their known skin activity could

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 account for the activity that was being observed in
2 cigarette smoke. They were all too minor of quantity.

3 Q How do you know that?

4 A From the from the properties of the quantities present
5 and the properties of the individual compounds, the quantities
6 required to produce skin tumors on animals.

7 Q There's a dose response relationship?

8 A Basically, yes.

9 Q How do you know that?

10 A From published work on benzpyrene and some of the other
11 compounds.

12 MR. EDZELL: Continuing at page 152, line 17.

13 MR. COHN: What page?

14 MR. EDZELL: One 52.

15 MR. COHN: Thank you.

16 Q Have you ever heard of a person named Hainer?

17 A Yes.

18 Q Who is that?

19 A He's a physical chemist. He was a physical chemist at
20 Arthur D. Little. He's deceased.

21 Q Did he do any work for Liggett & Myers?

22 A Yes.

23 Q Was there ever an attempt to develop a patent other than
24 the patent for palladium?

25 A For what?

PHYLLIS T. LEWIS, CSR & JOANNE N. ROOSTON, CSR

1 Q For any product produced by Liggett & Myers or proposed
2 to be produced by Liggett & Myers?

3 A The Lark filter was patented, the element filter was
4 patented, the Lark filter making machinery was patented.
5 There are others, yes, but those come to mind.

6 Q Who is W. C. Lothrop?

7 A He was an employee of Arthur D. Little.

8 Q What, if any, work did he do for Liggett & Myers?

9 A I don't know that he did any work for Liggett & Myers.
10 I think he was a vice-president of the corporation and was
11 present at some of the meetings.

12 MR. EDSELL: Page 166, line 22.

13 Q We also discussed yesterday how much money was spent by
14 Liggett & Myers on work performed for it by Arthur D.
15 Little. Do you recall that discussion, sir?

16 A If it was mentioned, yes.

17 Q I'm going to show you --

18 MR. COHN: Your Honor, I object to this question
19 and I object to the exhibit.

20 THE COURT: What page is it on, Mr. Edsell?

21 MR. EDSELL: Page 19 of the binder, your Honor.

22 THE COURT: Do you wish to be heard?

23 MR. COHN: Yes.

24 (The following takes place at sidebar.)

25 THE COURT: What's the objection?

1 MR. CONN: Your Honor, this letter is a letter of
2 Fred Helzer, who was then general counsel of Biggett to me
3 when I was out trying a lawsuit in Grand Rapids.

4 I don't see any probative effect at all. This
5 testimony is totally irrelevant. Dr. Bates doesn't remember
6 how much money it was. Mr. Edell wrote -- read in from Mr.
7 Ney's deposition yesterday how much money was spent. I
8 think this material is just totally irrelevant.

9 THE COURT: Is it already in the record?

10 MR. EDZELL: My recollection is that the project and
11 the totals are different than that reflected in the document
12 that Dr. Mold had. That, in fact, the figure in Dr. Mold's
13 is seven million dollars for this period of time and
14 actually only five million 900 was spent on the bio-res
15 project, which as I understand, is the biological research
16 project.

17 Do you understand what I'm saying? There is a
18 million dollars discrepancy between how much money was being
19 spent on research.

20 MR. CONN: This witness doesn't know that and he
21 said so. An attempt to get in a letter that was in response
22 to specific questions which were put to us by the Court is
23 certainly not proof of that.

24 THE COURT: You're not challenging the accuracy of
25 the information?

PHYLLIS T. LEWIS, CSR & JOANNE M. ROUSTON, CSR

1 MR. COHN: In the letter?

2 THE COURT: Yeah.

3 MR. COHN: No. I'm saying it did not attempt to
4 set down all the work that was done by Arthur D. Little
5 Liggett. As Mr. Edell knows from the documents and the
6 testimony, there was several projects going on, one of which
7 was bio-res and others.

8 MR. EDELL: That's the biological research project.
9 And you also had advertising work was being done up at
10 Arthur D. Little, two, other consulting work was being done
11 by them.

12 MR. COHN: I'm not talking about advertising.
13 There was no advertising work being done at Arthur D.
14 Little. That is not correct. There are other projects
15 going on.

16 THE COURT: Doesn't this letter say what these
17 figures are?

18 MR. COHN: No, it doesn't.

19 MR. EDELL: Sure it does.

20 THE COURT: It does.

21 MR. COHN: But, Judge, this so-called bio-res
22 covers all the work done in Arthur D. Little. There was
23 other work being done.

24 THE COURT: That doesn't mean it's inadmissible.

25 MR. COHN: I know that. I'm trying to say what is

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 it being offered for? That's what I'm trying to get across.
2 This witness doesn't remember the numbers.

3 MR. EDELL: It's immaterial?

4 MR. CONN: Why is it immaterial? The letter isn't
5 addressed to him, he never received it.

6 What you're trying to do is put in a letter that
7 he's never seen before and he doesn't know the accuracy of.

8 MR. EDELL: Well, what I'm saying --

9 MR. CONN: That's not the purpose of this witness,
10 your Honor. That's my point.

11 THE COURT: I've heard that objection before.

12 Let's deal with admissibility. Is there any
13 challenge to its admissibility?

14 MR. KEARNEY: Yes. The challenge is it's simply
15 not probative of any issue in this case and its prejudicial
16 value outweighs the probative value, if any, in the case.
17 We have in the record already several indications of the
18 amount of money spent on the bio-res project at Arthur D.
19 Little, it came in, one through Harris.

20 If you recall, he had charts comparing the amount
21 of money spent in the various projects, Arthur D. Little
22 versus advertising. It came in various different times.
23 Witnesses were asked to give their opinions on how much was
24 spent on the project. It came from a document that's
25 already in evidence. It's a document Harris testified to.

1 THE COURT: What do you say the amount is?

2 MR. EDELL: My recollection is that there is a
3 million dollars difference on these documents.

4 MR. KEARNEY: My recollection is that the project
5 is the same, about five million.

6 MR. EDELL: I'll check it out.

7 THE COURT: Can't we stipulate it?

8 MR. KEARNEY: I'm sure we can.

9 MR. COHN: The point is it's 1969. This thing
10 changes.

11 THE COURT: This is as of 1960?

12 MR. EDELL: Judge, I don't want to hold this up.

13 What I'm saying is -- whenever we take a break
14 we'll look at the other ones.

15 MR. COHN: This witness certainly --

16 (The sidebar discussion is concluded.)

17 MR. EDELL: Go to Page 172, line 18.

18 Q Have you ever heard of Fitzgerald and Dancer?

19 A Yes.

20 Q Who was that?

21 A Advertising firm.

22 Q Did they do work for Liggett & Myers?

23 A At one time they did, yes.

24 MR. EDELL: 174.

25 Q Do you recall being informed by Arthur D. Little "that a

1 THE COURT: Any objections to that?

2 MR. KEARNEY: Sorry. What was the page in the
3 book?

4 MR. EDELL: Page 21, Mr. Kearney.

5 MR. KEARNEY: No objection.

6 THE COURT: Jury may turn to Page 21.

7 MR. EDELL: I will ask the question again.

8 Q Look at Bates 12 for identification and directing your
9 attention to page nine and ten, see if that refreshes your
10 recollection?

11 A I still don't recall it.

12 THE COURT: Just for our assistance, Mr. Edell,
13 nine and ten is what page numbers? Is it 24 and 25?

14 MR. EDELL: Excuse me, one second, your Honor.

15 Believe the bottom of 24 continuing to the top of
16 page 25.

17 THE COURT: The jury can turn to that then, 24 and
18 25.

19 THE COURT: We are waiting on you, Mr. Edell.

20 MR. EDELL: 131, line 14.

21 MR. CONN: What?

22 MR. EDELL: 132. 132.

23 Q Did you rely upon Arthur D. Little to interpret the
24 literature for you regarding cigarette smoking and health?

25 Mr. Conn: I take it now "you" refers to Dr. Bates.

1 number of statistical studies have been made in many
2 different countries in an attempt to located the agent
3 responsible for the increased lung cancer incidence. Some
4 of these studies have apparently been more interested in
5 associating lung cancer with cigarette smoking than in
6 locating any other possible causative agent.

7 While it is true that some of the studies have been
8 done by persons who seem to be extremely biased in their
9 views and in their interpretations of the results, it is not
10 possible to dismiss these finding as just statistics -- and
11 not to pay them proper attention.

12 A number of able statisticians are on both sides of
13 the question regarding the interpretation of the data and
14 its significance. Essentially all of these studies agree
15 that cigarette smoking seems to be associated with lung
16 cancer."

17 Do you recall somebody telling you that, sir, from
18 Arthur D. Little?

19 A I do not.

20 Q Question: Look at Bates 12 for identification.

21 MR. EDELL: That is in the jury binder at Page 21,
22 your Honor.

23 It's Plaintiff's Exhibit 6102. Direct your
24 attention to pages nine and ten, see if that refreshes your
25 recollection.

1 Mr. Edell: Liggett & Myers, sir?

2 A Certainly valued Arthur D. Little's opinion, but not
3 necessarily relying on it. I don't have the slightest idea
4 whether they did or not.

5 Q As a matter of fact, Liggett & Myers contracted with
6 Arthur D. Little to prepare a submission to the Surgeon
7 General on behalf of Liggett & Myers regarding the
8 literature pertinent to cigarette smoking and health, didn't
9 they?

10 A Yes.

11 MR. CONY: I ask that Page 183 be read from line 1
12 through 184, to line 15.

13 MR. EDELL: If he asks for much more, I will have
14 him read it, your Honor.

15 THE COURT: I will permit it to be read.

16 Q Did they rely on anybody else to do that on their
17 behalf, sir?

18 A No.

19 Q Did Liggett & Myers submit anything itself to the
20 Surgeon General?

21 A Yes, considerable, yes.

22 Q Who prepared that information?

23 A The laboratory at Liggett & Myers.

24 Q Did any of that information deal with an interpretation
25 of the literature regarding cigarette smoking and health?

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 A Not -- in apart on the part of Liggett & Myers. Part in
2 that record to the Surgeon General from Liggett's
3 laboratories had to do with chemistry and cigarette
4 manufacturing technology and filtration.

5 Q That portion of the report dealing with an
6 interpretation of the literature --

7 A Was prepared by Arthur D. Little.

8 Q Why was it prepared by Arthur D. Little and not by the
9 research and development facility of Liggett & Myers?

10 A Because in the research department at that time we
11 didn't have anyone qualified in any field other than in the
12 chemistry and engineering and physics.

13 Q So for the purposes of this, the submission to the
14 Surgeon General regarding the interpretation of the
15 literature on cigarette smoking and health, Liggett & Myers
16 relied upon the expertise of Arthur D. Little. Isn't that
17 correct?

18 A To summarize the literature, yes.

19 Q Because it didn't have the capability of doing that
20 interpretation itself. Correct?

21 A That's correct.

22 MR. EDELL: Page 187. Referring to biological
23 experiments.

24 Q They told you that these materials were cancer causing?

25 A There was some material in the cigarette smoke or

1 fractions that caused tumors on the mouse, mice skin.

2 Q So your answer is yes? Is that correct, sir?

3 A They told us materials that were active in mouse and
4 produce tumors.

5 Q Did they tell you that they were cancer causing or
6 materials that were cancer causing?

7 A In mice.

8 Q Did they tell you that there were materials that were
9 cancer promoting?

10 A In mice, yes.

11 Q Are esters, phenols and amines found in cigarette smoke
12 sir?

13 A Some of them are, yes.

14 Q Is that statement contained in the paragraph correct,
15 sir, quote, the --

16 MR. COHEN: Excuse me, what page.

17 MR. EDELL: 193, line 22.

18 MR. KEARNEY: This question refers to what was
19 marked as Bates 17 and that appears in complete form in
20 the defendants' book at tab five. I would ask the jury to be
21 directed to that, now.

22 MR. EDELL: No objection.

23 THE COURT: Jury -- what tab?

24 MR. KEARNEY: Tab five, your Honor.

25 THE COURT: Tab five of the defendants' book.

PHYLLIS T. LEWIS, CSR & JOANNE N. HOUSTON, CSR

1 MR. KEARNEY: Under Bates.

2 MR. EDELL: One of the jurors --

3 A JUROR: I don't have a five.

4 You don't have a five either?

5 A JUROR: No.

6 THE COURT: Look on with your neighbors for the
7 time being.

8
9 Q Question: Is the statement contained in the paragraph
10 correct, sir, the possible injurious effects of cigarette
11 smoke on the human system have been a source of concern to
12 the Liggett & Myers Tobacco Company for many years. A
13 tangible expression of this concern was evidenced early in
14 1954 with the establishment of a biological test program at
15 Arthur D. Little, Inc. of Cambridge, Massachusetts?

16 A I think -- would you ask the question again, please?

17 Yes.

18 MR. EDELL: Page 196.

19 MR. CONN: Your Honor. We would request for
20 ~~that this reading start at the preceding page,~~
21 ~~page 195 at the bottom of the page, line 23, and proceed~~
22 ~~through line 12 of 196.~~

23 THE COURT: Well, that doesn't seem to be necessary
24 for completeness as to that limited question and answer, so
25 I will not require it. You can read 13 and 15.

1 Q Question: Carcinomas are cancers, sir. Is that
2 correct?

3 A As far as I'm aware they are, yes.

4 MR. EDELL: Page 216.

5 Q Were you aware of work that Arthur D. Little did for
6 Liggett & Myers with respect to litigation?

7 A Yeah. I recall that they did some.

8 Q What is your recollection of that work, sir?

9 A I never, to my knowledge, never saw any of the results
10 of the work.

11 Q How did you become aware that Arthur D. Little was doing
12 work for Liggett & Myers with respect to litigation?

13 A I guess -- let me see. I may have misstated it when I
14 said litigation, in that the only real recollection I have
15 is that-- I met Erwin Miller who is a statistician and I
16 knew was at Arthur D. Little in Washington at some
17 congressional hearings and found out he was doing some work
18 for Webster Sheffield.

19 Q You weren't aware that Dr. Machle was making
20 recommendations with respect to expert witnesses that were
21 made by Liggett, Myers --

22 A No.

23 Q -- in terms of litigation?

24 A No.

25 Q Do you recall Dr. Barkis testifying in a product

1 liability action brought against Liggett & Myers? Do you
2 remember the Pritchard case, sir?

3 A I heard of the Pritchard case, yes.

4 Q Do you remember Dr. Kensler testifying in that matter?

5 A No, I don't.

6 Q Do you recall Liggett & Myers eventually joining the
7 counsel for Tobacco Research?

8 A Where are you, Mr. Edell?

9 MR. EDELL: Page 222, line eight.

10 Q Do you recall Liggett & Myers eventually joining the
11 counsel for Tobacco Research?

12 A Yes.

13 Q Do you recall when that occurred, sir?

14 A I don't recall precisely. I think it was subsequent to
15 1964, but I am not certain.

16 Q Were you part of the discussions at Liggett & Myers in
17 which the decision was made to join the Council for Tobacco
18 Research?

19 A Yes.

20 MR. EDELL: Excuse me.

21 Q Who participated in those discussions other than
22 yourself?

23 A Mr. Harrington, who was president, and Mr. Egan who was
24 general counsel, and myself were the three major
25 participants.

1 Q Any minor participants?

2 A None that I recall.

3 Q Where did that meeting occur, or series of meeting?

4 A I think we have had several telephone conversations
5 not three-party conversations but one to one, and a brief
6 meeting or two in Mr. Harrington's office in New York.

7 PR. EDELL: Turn to 224.

8 Q What is the Council for Tobacco Research, sir?

9 A It was an organization financed by several tobacco
10 companies, I am not certain now of who all they were, for
11 the purpose of making grants to scientists to do research
12 subjects that related to tobacco and cigarettes.

13 Q Did it have anything to do with the legal affairs of
14 Liggett & Myers that you're aware of?

15 A Not that I'm aware of.

16 Q Did the Council for Tobacco Research in any way, or you
17 contact with that association in any way, deal with the
18 legal affairs of Liggett and Myers?

19 A No, not to my knowledge.

20 Q Did your discussions with Mr. Hess deal with the legal
21 aspects of joining the Council for Tobacco Research?

22 A No.

23 A No.

24 Q Tell us about your conversations with Mr. Hess on the
25 subject, sir?

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 A Mr. Harrington wanted, for some reason which I never
2 understood, wanted Liggett to join the Council for Tobacco
3 Research. I thought Liggett could spend its money to
4 Liggett's benefit, greater benefit by spending it through
5 our research department. As I recall, Mr. Moss didn't
6 really have such opinion one way or the other.

7 Q What was Mr. Harrington's articulated reason for joining
8 the Council for Tobacco Research that you couldn't
9 understand?

10 A I think he had been approached by the director or
11 whoever the person was at the Council for Tobacco Research
12 to do it and had been under some continuing -- not pressure,
13 but continuing requests from Council to join it and I
14 assumed that their reason was to increase their grant money
15 and Mr. Harrington decided that we would join, but he -- as
16 I guess an SOP to me, he decided that he told me to work
17 with the people in a cooperative fashion and that we would
18 re-evaluate it at some subsequent time.

19 Q Why did you feel that Liggett's money would be better
20 ~~spent on the~~ research that was being conducted at the
21 ~~research~~ department at Liggett & Myers, as opposed to
22 contributing those monies to the Council for Tobacco
23 Research?

24 A I alluded to this yesterday. It's a basic research
25 philosophy I have if you're doing goal-oriented research you

1 can do it more efficiently by directing it in a step-by-step
2 fashion than you can a by granting small portions to a lot
3 of different individuals. In a directed program you can cut
4 off avenues which don't prove fruitful, you can shift to
5 more fruitful avenues. Whereas, with the grant program
6 you're stuck for the period of the grant. That's the basis
7 of my reason.

8 Q Did your opinion in regard to how the research should be
9 conducted in the most efficient manner remain the same
10 during the entire time period that you were director of
11 research for Liggett & Myers?

12 A Yes.

13 Q Did you articulate that opinion to other executive
14 members of the corporate staff of Liggett & Myers?

15 A Only those that I thought would help.

16 Q Who were they, sir?

17 A Primarily the chief executive officer.

18 Q Who was it other than Mr. Harrington? Anyone other than
19 Mr. Harrington?

20 A Subsequent to Mr. Harrington's presidency, Mr.
21 Mulligan was president.

22 Q You informed him of your opinion also, Mr. Mulligan. Is
23 that correct?

24 A I don't recall whether I did or not because we
25 eventually got back out of the Council for Tobacco Research.

1 and I don't recall under who's presidency it was.

2 Q But it was during the time period that you were research
3 director?

4 A Yes.

5 MR. EDELL: Your Honor, can we take our afternoon
6 recess?

7 THE COURT: Yes. We'll resume at four o'clock.

8 THE CLERK: All rise.

9 (Recess.)

10 THE CLERK: All rise.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: Please be seated.

14 Mr. Edell.

15 MR. EDELL: Page 228, line five.

16 Q Do you recall any meetings with other scientific
17 directors of other cigarette manufacturers regarding the
18 research that was being conducted concerning cigarette
19 smoking and health?

20 A I had some meetings with other research directors while
21 I was at the Council for Tobacco Research. And on
22 occasion I had meetings with other research directors at the
23 Tobacco Institute when they became interested in some
24 specific scientific subject.

25 Q What is your recollection as to how the Council for

1 Tobacco Research funded research?

2 A The scientific staff at the Council for Tobacco Research
3 received proposals for research and requests for grants from
4 various scientists around the country, I presume around the
5 world. I don't recall precisely.

6 The staff assembled these things and there were
7 periodic meetings of their scientific advisory council, who
8 were scientists from around -- and the scientific council
9 had whatever discussions they felt necessary and either
10 accepted or rejected grant proposals. Sometimes they sent
11 them back for modification.

12 Once they were accepted, the staff of the Council
13 for Tobacco Research did the general administration of them
14 and got the money to the grantees and received reports back
15 from the grantees.

16 It's sort of a standard format on doing scientific
17 grant work.

18 Q Did you know any of the members of the scientific
19 advisory board for the Council of Tobacco Research?

20 A I know one.

21 Who was that, sir?

22 A I can't remember his full name, Dr. Lynch from -- he's
23 dead now. He was -- chief of obstetrics at the Medical
24 University of South Carolina in Charleston.

25 The reason I knew him, I was -- he was married to

1 my father's first cousin.

2 Q Is the name Merrill Lynch?

3 A No.

4 Q Kenneth Lynch?

5 A I beg your pardon?

6 Q Kenneth Lynch.

7 A Beg your pardon?

8 Q Ken Lynch?

9 A Yes. Kenneth Lynch sounds familiar, anyhow.

10 MR. EDELL: You had to be there, Judge.

11 THE COURT: I have to tell the jury, if I can
12 interrupt, there was somebody who tried a case in this
13 courthouse representing himself and he would ask the
14 question and then answer it himself and he would ask the
15 question and say, "Would you mind repeating it?"

16 Excuse me, Mr. Edell.

17 MR. EDELL: Page 238, line seven.

18 Q Do you know whether or not he had any --

19 MR. COHN: Your Honor, can we have the line after
20 "Kenneth Lynch sounds familiar." Lines four through
21

22 MR. EDELL: I'll read them.

23 Q Did you ever meet with him on a personal basis?

24 A No.

25 Q Do you know whether or not he had any expertise in the

1 area of research concerning cigarette smoking and health?

2 A. I have no idea.

3 Q All you know, he was involved in obstetrics?

4 A He was, as I recall, the chief of obstetrics at, you
5 know, the Medical University of South Carolina Medical
6 School.

7 Q Did you ever attend meetings of the Council --

8 MR. COHN: Can we have the balance of that page,
9 from line 16 to 23 read?

10 THE COURT: He has no knowledge. No, I don't think
11 it's necessary.

12 Q Did you ever attend meetings of the Council for Tobacco
13 Research?

14 A I attended a few of the scientific advisory meetings.

15 Q What did you mean by scientific advisory meetings?

16 A Where they passed on grants.

17 Q Did other research directors attend those meetings,
18 other than yourself?

19 A Occasionally. It was by invitation only. They would
20 have two directors or maybe three. Sometimes they, to my
21 knowledge, they met sometimes without inviting any directors
22 but I did attend several meetings.

23 Q Do you remember who E. Harlow was?

24 A Who?

25 Q Harlow.

PHYLLIS T. LEWIS, CSR & JOANNE N. HOUSTON, CSR

1 A Edward?

2 Q You would know better than I.

3 He's from American Tobacco Company?

4 A Yes.

5 Q Who is he, sir?

6 A He was a chemist and I think at one time he was director
7 of research of the American Tobacco Company, but I'm not --
8 I'm a little hazy on what his positions were.

9 Q Do you know a R. B. Griffith from Brown & Williamson?

10 A Yes.

11 Q Do you know his first name?

12 A Robert.

13 Q Do you know what position -- do you know what his
14 position was with Brown & Williamson?

15 A Director of research at Brown & Williamson.

16 Q M. Senkus?

17 A Yes.

18 Q Who is that?

19 A Dr. Murray Senkus from R. J. Reynolds Tobacco Company.

20 Q What position did he hold?

21 A Director of research.

22 Q Dr. Wakeham?

23 A Yes.

24 Q He was with Philip Morris?

25 A Yes.

PHYLLIS T. LEWIS, CSR & JOANNE M. ROUSTON, CSR

1 Q Alexander Spears?

2 A Yes.

3 Q What position did he hold?

4 A He was director of research at Lorillard.

5 Q Do you recall meeting with those gentlemen in February
6 of 1968, at Hilton Head, South Carolina for two and a half
7 days?

8 A Yes.

9 Q Do you recall the purpose of that meeting, sir?

10 A Generally, yes.

11 Q What do you recall the purpose of that meeting to be?

12 A Purpose of the meeting was to attempt to make some
13 recommendations to various management individuals in the
14 tobacco industry to fund a directed research program into
15 a scientific area of interest to the tobacco industry.

16 Q Whose idea was it to have that meeting?

17 A Dr. Griffith. He called the meeting.

18 Q Did you have any discussions with anyone at Liggett
19 concerning your participation in that meeting?

20 A Yes.

21 Q Who did you speak to prior to going to that meeting?

22 A Mr. Hoss.

23 Q Did you have any conversations with Mr. Hoss regarding
24 the legal aspects of the meeting?

25 A That was the purpose of my meeting with him.

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 Q Did you discuss your going to that meeting with anyone
2 else other than Mr. Hoss?

3 A No.

4 Q Did Mr. Hoss give you any guidelines?

5 A Yes, but I don't recall what they were.

6 Q What occurred at that meeting in February, 1968?

7 A We sat around tables similar to this and talked.

8 Q What was the substance of the conversations?

9 A As I outlined before, an attempt to visualize an
10 organization to do research that would be divorced from
11 proprietary interest of the individual tobacco companies.

12 One of the reasons that Dr. Griffith, I think,
13 called the group together was that he knew in his own mind
14 that in his laboratory -- he thought that all of our
15 laboratories were attempting to do good science and every
16 time we published anything, somebody credited it only with
17 being the result of having been bought by a tobacco company
18 and it was an attempt to establish an organization that
19 would create more credibility in the scientific community.

20 Q Why was that necessary, sir?

21 A Just a prejudice of certain individuals.

22 Q Prejudice of which individuals?

23 A People that think that any science done in an industrial
24 organization is bought and that they can buy the results
25 they want.

PHYLLIS T. LEWIS, CSR & JOANNE N. HOUSTON, CSR

1 Q The purpose of the meeting was to form a different type
2 of research entity other than the CTR. Isn't that correct?

3 A It was a directed research organization, not a grant
4 organization. It was -- we visualized --

5 Q You say you visualized what, sir? You said "we
6 visualized"?

7 A We visualized that was the product of our meeting so
8 there was no -- it was a different -- it was different from
9 the Council of Tobacco Research.

10 MR. SDELL: Page 238.

11 Q I show you Bates 23 for identification.

12 And tell us, sir, whether or not that is the
13 memorandum which you prepared for Mr. Harrington as a result
14 of your attending the meeting in February of 1968, with the
15 other scientific directors from American, Brown &
16 Williamson, P. Lorillard and Philip Morris and R. J.
17 Reynolds.

18 A Yes.

19 MR. SDELL: That's plaintiff's exhibit 919, your
20 Honor, in the binder at page 25.

21 THE COURT: Any objection?

22 MR. COHN: No.

23 THE COURT: The jury may turn to page 26.

24 Q Your recollection of the events of that meeting
25 certainly were clearer on February 19, 1968, than they are

1 today, correct, sir?

2 A Yes.

3 Q You had been instructed by Mr. Moss not to take part in
4 any discussions of the mission or a possible reorganization
5 of CTR. Is that correct?

6 A I don't recall that.

7 Q I refer you to page two, sir, where it says exactly what
8 I just read to you.

9 A That's what I said.

10 Q Do you recall why Mr. Moss gave you that instruction,
11 sir?

12 A No.

13 Q You went back and communicated the consensus of the
14 research directors to Mr. Harrington as set forth in Dates
15 23, correct?

16 A That's correct.

17 MR. EDLELL: Page 248, line 23.

18 Q What was your understanding of the work that was being
19 funded by the tobacco industry through the AMA?

20 A That the tobacco industry provided a certain amount of
21 money, the amount I do not know, and there was a research
22 committee or some group within the AMA that received
23 proposals from their members. And based on what they
24 thought the merits of the proposals were, they granted money
25 for them to do the research.

1 Q Did you at any time review the work --

2 MR. COUN: Your Honor, I would request that lines
3 eight to 13 on page 249 be read.

4 MR. SNELL: Your Honor, there are no responses. I
5 doesn't add anything.

6 THE COURT: No, they need not be read.

7 Q Did you at any time review the work that was being
8 funded through the ANA?

9 A I've listened to presentations in a big open meeting
10 made by the researchers.

11 Q Where were these meetings, sir?

12 A I think I attended one in -- well, suburb of Phoenix.

13 Q Scottsdale?

14 A Yes.

15 Q 1970?

16 A I don't recall the time.

17 And I also attended one in Newport Beach,
18 California.

19 Q Did you ever ask Dr. Mold to evaluate the ANA program
20 for you?

21 A Not that I recall. I never had anything for him to
22 evaluate. I never had any reports or documents of any sort
23 that I recall.

24 Q You understand that when I am talking about this ANA
25 program, it's the ANA-ERP program, Education Research

1 Foundation?

2 A Yes. I think that was what they called their grant
3 committee or whatever.

4 Q Did you review the publication of the foundation's
5 conclusions after they were published?

6 A No.

7 Q You have no recollection of having Dr. Mold look into
8 the AMA-ERP program. Is that correct?

9 A That's -- I have no recollection of it.

10 Q I'm going to show you a document which was marked at
11 Provost's deposition.

12 I'm going to show you a document marked Bates 25
13 for identification, sir.

14 MR. EDELL: That's in the jury binder at page 31,
15 your Honor, plaintiff's exhibit 1322.

16 THE COURT: Any objection?

17 MR. KEARNEY: No.

18 MR. COHN: No, your Honor.

19 THE COURT: The jury may turn to page 31, is it?

20 MR. EDELL: Thirty-one, your Honor.

21 Q It is a memorandum from James D. Mold to Dr. W. W.
22 Bates, Jr., June 16, 1970, subject, AMA-ERP program of
23 research on tobacco and health.

24 The first sentence reads: "You have requested that
25 I comment on the AMA-ERP program of research on tobacco and

1 health."

2 I'd like for you to review this document and see if
3 it refreshes your recollection with respect to whether or
4 not you asked Dr. Vold to evaluate the AMA-TRF program.

5 A I don't recall having seen this before.

6 Q Dr. Bates, I'm going to show you a document which has
7 been marked as Bates 25 for identification.

8 It's entitled: "Comments on AMA-TRF Program for
9 Tobacco and Health From the Research Directors of the
10 Supporting Companies."

11 MR. EDELL: That's in the binder at page 35, your
12 Honor. Plaintiff's exhibit 1321 in evidence already.

13 THE COURT: The jury may turn to page 35.

14 Q See if that refreshes your recollection with respect to
15 attending a specific meeting in Scottsdale, Arizona on May 6
16 through 8, 1970.

17 I'll also represent to you that that document was
18 contained in the files of Liggett & Myers.

19 Q Sir, does that refresh your memory with respect to
20 when you attended a meeting in Scottsdale, Arizona?

21 A It gives the date.

22 Q May of 1970?

23 A If that's what it says. I assume it's the same date,
24 isn't it?

25 Q Do you recall having a discussion with other

1 representatives of the research departments of the member
2 companies?

3 A No formal discussion that I recall.

4 Q Do you recall informal discussions?

5 A Sure. I ran into one or another that were in attendance
6 at lunch or at dinner, but I don't recall any meeting which
7 drafted any position or suggested or anything of that
8 nature.

9 Q Do you recall that being the general opinion of the
10 scientific representatives that not more than 50 percent of
11 the program was relevant to smoking?

12 A I don't recall arriving at any consensus whatsoever.

13 Q Did you formulate --

14 A My opinion was that very little of it was other than
15 toxicology or nicotine.

16 Q Very little of it related to smoking?

17 A Very little of it related to smoking.

18 Q Did you reported that fact to anyone at Liggett & Myers?

19 A I don't know.

20 Q 1970, you were on the Board of Directors of Liggett &
21 Myers?

22 A Yes.

23 MR. EDGELL: Page page 279, line 17.

24 Q At some point in time the company did initiate a tobacco
25 additive program designed to reduce or eliminate the

PHYLLIS T. LEWIS, CSR & JOANNE M. HOUSTON, CSR

1 tumorigenic activity of cigarette smoke, correct?

2 A On mouse backs.

3 Q I'm sorry?

4 A That's correct, as far as mouse backs is concerned.

5 Q There were also tests performed by Arthur G. Little to
6 determine what biological effect palladium would have.
7 Isn't that correct?

8 A I think those were done. I think they were being talked
9 about when I left. Whether they -- I don't know whether
10 they actually did them or not.

11 Q Why was it proposed that animal studies be performed
12 with respect to palladium?

13 A Because it was a substance that was not native to
14 tobacco, that was being added to tobacco and wanted to make
15 sure that there was no unexpected effect due to palladium on
16 the biological systems.

17 Q You didn't know what effect palladium would have on
18 animals or human beings, correct?

19 Mr. Cohn: By you, who do you mean?

20 Mr. Edell: Liggett & Myers.

21 A We never tested -- didn't propose to test on human
22 beings.

23 We were testing -- the course of research which led
24 to the use, to the possible use of palladium on tobacco was
25 guided by the skin tumors on mice.

1 When a composition of tobacco and palladium was
2 developed which gave few or no skin tumors, we then
3 subjected the smoke to some other tests, which ones I don't
4 recall, to see whether we had inadvertently increased the
5 ciliary activity or some other property of the cigarette
6 smoke.

7 Q By including palladium, correct?

8 A By including palladium, yes.

9 Q That was as close as you could get to see whether
10 palladium would be safe to use in humans being, correct?

11 A Well, we did chemical tests to see whether palladium
12 remained in the cigarette ash or whether it was transmitted
13 in smoke, tests of that sort.

14 Q But one of the reasons that the animal studies were
15 being done with palladium was to see whether or not
16 palladium might be harmful to a biological --

17 A System.

18 Q -- system, correct?

19 A Correct.

20 Q That was as close as you could get to seeing whether or
21 not it would have an effect on human beings, correct?

22 A It was as close as we had facilities to, yes.

23 Q Because it was unethical to do that type of
24 experimentation on human beings, correct?

25 A That's what the physicians say, yes.

PHYLLIS T. LEWIS, CSR & JOANNE N. HOUSTON, CSR

1 Q You do recall that when palladium was added to the
2 tobacco, that there was a reduced incidence of papillomas
3 and carcinomas in mice, correct, sir?

4 A That's correct

5 Q Was that information made available to the public?

6 A It was made available to the National Cancer Institute
7 for their tests.

8 MR. EDELL: That is it for Dr. Bates, your Honor.

9 THE COURT: Okay.

10 Whose copies are these?

11 MR. EDELL: Mr. Kearney's.

12 May we be heard at side bar?

13 THE COURT: Yes.

14 (Side bar.)

15 THE COURT: Are we through for the day?

16 MR. EDELL: Yes. They are going to get an
17 unredacted version, and I didn't want to put it in the
18 record in open court.

19 MR. PARRISH: Sorry.

20 MR. EDELL: Unredacted of 939.

21 THE COURT: Nothing else. We have to rule on Mr.
22 Darnell's matter.

23 MR. BLAKLEY: Before you excuse the jury, I have
24 one matter --

25 THE COURT: What will we do about it?

WITNESSDIRECTCROSSREDIRECTRECROS

DANIEL PROVOST

By Mr. Edell

2484

2548

By Mr. Cohn

2543

Deposition of Walter E. Carroll read - pg. 2559

Deposition of William Bates, Jr. read - pg. 2587

EXHIBITIDENT.EVD.

P-2705

2492

P-2745

2502

P-939

2556